

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

████████████████████

Claimant.

Appeal Docket No.: ██████████ 263102W

Agency Case No.: ██████████

Matter of First Impression
Decided *en banc*

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

This case is before the Unemployment Insurance Appeals Commission (Commission), *en banc*, pursuant to the claimant's timely appeal from a February 3, 2021 decision issued by an Administrative Law Judge (ALJ). The ALJ's decision affirmed a November 13, 2020 Unemployment Insurance Agency (Agency) redetermination and found the claimant ineligible for benefits under the availability provision in Section 28(1)(c) of the Michigan Employment Security Act (Act), beginning March 22, 2020 and continuing until the claimant is available to work full-time.

In reviewing the claimant's appeal, we initially determined that the issue on appeal was a matter of first impression before the Commission that required interpretation of the Act. That issue was whether an individual limited to part-time employment is eligible for Pandemic Unemployment Assistance (PUA) benefits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 15 USC 9021 *et seq.*, which involves Section 28(1)(c) of the Act. As this case was heard as a matter of first impression, this case is considered by the entire Commission, pursuant to Executive Order No. 2019-13.

The Commission granted written argument and oral argument, as requested by the claimant. The Commission also granted five requests to submit amicus curiae briefs and those briefs were received and accepted by the Commission.

The Commission held oral argument on May 5, 2021, at which counsel for the claimant, David Blanchard, and counsel for the Agency, Assistant Attorney General Rebecca Smith,¹ appeared and presented their respective positions.

After oral argument, but while the claimant's appeal remained pending before the Commission, the legislature amended Section 28(1)(c) of the Act to explicitly state that individuals who are able and available for part-time work are eligible for PUA, as set forth below:²

¹ We note that the amicus brief submitted by Michigan Attorney General Dana Nessel argued a contrary position to that of the Agency in this matter.

² 2022 PA 18.

(1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:

- (c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. **Notwithstanding any other provision of this act, for all claims filed after March 1, 2020, and established under the federal pandemic unemployment assistance program, with respect to the able and available requirements, an individual must be able and available to perform suitable full- or part-time work. . . .** [Emphasis added.]

The amendment was effective March 1, 2020.

By amending Section 28(1)(c) with retroactive effect, the legislature resolved the very issue presented by the claimant's appeal. Although statutory interpretation by this Commission is no longer required to decide this matter, statutory application is, and we find as follows.

The facts in this case are not in dispute. The claimant testified that she was unable to work full-time due to a disability but earned income in part-time self-employment involving auction houses. The claimant lost this income when the auction houses closed due to the pandemic. The claimant's availability for part-time work did not change.

The term "eligible" is defined in the Operating Instructions for the CARES Act to mean a person who is a "covered individual." UIPL 16-20 at I-3. There are two conditions to being a "covered individual." *Id.* at I-2 and I-3. First, an individual must *not* be entitled to regular state unemployment benefits or like benefit programs. Second, the individual must self-certify that he or she is otherwise able to work **and available to work within the meaning of state law**, but is unemployed, partially unemployed, or unable or unavailable due to one of the COVID-19 related criteria set forth in the CARES Act, Section 9021(a)(3)(A)(ii)(I)(aa)–(kk).

That the claimant satisfied the first condition is not in dispute. As to the second condition, amended Section 28(1)(c) **now** provides that an individual available for part-time work meets the able and available requirement for a claim under PUA. In this matter, the claimant's PUA claim was filed on April 21, 2020, which is within the effective period of the amendment. The claimant's un rebutted testimony established that she was available to perform part-time work at all times pertinent to her PUA claim. Accordingly, she met the requirement set forth in Section 9102(a)(3)(A)(ii) of the CARES Act, to be available for work within the meaning of state law.

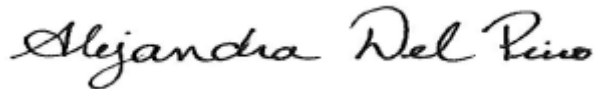
As such, we must reverse the ALJ's decision and find the claimant eligible as she meets the availability provision in Section 28(1)(c) of the Act, as retroactively amended, for PUA claims.

IT IS THEREFORE ORDERED that the ALJ's February 3, 2021 decision is REVERSED. The claimant is ELIGIBLE for PUA benefits as she has established that she is available for work within the meaning of the PUA provision in Section 28(1)(c) of the Act.

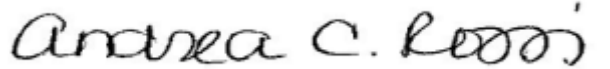
The claimant does not owe restitution as set forth in the "Weeks of OverPayment" document dated November 13, 2020. Upon receipt of this decision, the Agency shall immediately cancel all restitution related to this case.

The claimant may receive benefits if otherwise eligible and qualified.

This matter is referred to the Agency for action consistent with this decision.



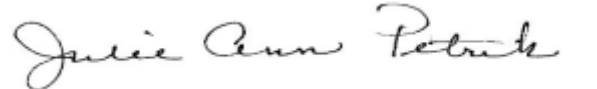
Alejandra Del Pino, Commissioner



Andrea C. Rossi, Commissioner



D. Lynn Morison, Commissioner



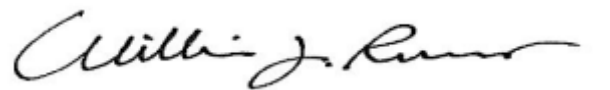
Julie A. Petrik, Chairperson



Lester A. Owczarski, Commissioner



Neal A. Young, Commissioner



William J. Runco, Commissioner

MAILED AT LANSING, MICHIGAN July 29, 2022

This decision shall be final unless EITHER (1) the Unemployment Insurance Appeals Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME. August 29, 2022